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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,645	03/14/2001	William Clune	05918-213001 / 4080	2481
26161	7590	11/18/2003	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			BRITTAIN, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808,645

Applicant(s)

CLUNE, WILLIAM

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2003 and 18 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-93 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 10, 16-18 and 27-75 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 80-93 is/are allowed.
- 6) ☒ Claim(s) 5-9, 14, 15 and 76-79 is/are rejected.
- 7) ☒ Claim(s) 11-13 and 19-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

Election/Restriction

Applicant's election without traverse of Group I comprising figures 1 B-1 F, 3D and 7A in Paper No. 6 is acknowledged.

Claims 1-4, 10, 16-18, and 27-75 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-9, 14, and 76-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilston et al. (WO 97/31605) in view of Suenaga et al. (EP 826354) and Roe et al. (US 5554145).

Hilston et al. (Figures 2, 3) teach a method of forming a fastener comprising forming a continuous sheet-form base having a fastener 44a extending therefrom, the base further having non-planar undulations 46 in which the base extends out of its plane to form a peak that extends along a longitudinal direction of the base with opposite major surfaces of the base remaining generally parallel, the undulation 46 being elastically deformable to enable the base to stretch laterally upon application of a lateral tensile force to the fastener product. The corrugations 46 may be formed during the

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molding or stamping of the belt or in other conventional manners (page 6, lines 23-25).

The difference is that it isn't stated that there are a multiplicity of fastener elements formed by molding with the sheet-form base through a continuous process and the molding or stamping process is not stated as being continuous. However, Suenaga et al. (figures 20-22; col. 10, lines 1-24) teach that it is desirable to form a molded elastic fastener tape 1 with a multiplicity of fastener elements 4 formed by molding with the sheet-form base and molded integrally with an elastic portion so that there is greater freedom of securement and adjustment of the diaper. Suenaga et al. do this so as to have a simple process while recognizing that cost savings are desirable (col. 1, line 53 - col. 2, line 1). Further, Roe et al. (figures 4, 12, 20-22) suggests the use of rollers 502, 504 to impart the undulations to the base as being an expedient manner to create undulations. It would have been obvious to modify the method of forming a fastener taught by Hilston et al. so that there are a multiplicity of fastener elements formed by molding with the sheet-form base in view of Suenaga et al. teaching that it is desirable to form a molded elastic fastener tape 1 with a multiplicity of fastener elements 4 formed by molding with the sheet-form base and molded integrally through a continuous process with an elastic portion so that there is greater freedom of securement and adjustment of the diaper and further utilize a continuous molding process as the method of making the undulations in view of Roe et al. suggesting such a method as being expedient in making undulations. As to claim 14, note that Suenaga et al. suggest the use of polyamide for the fastener section 3 (col. 10, lines 19-24). As to claims 76-79, Suenaga et al. suggests the use of integrally molded hook and also mushroom heads

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(figure 31), each of which being well known shapes utilized in separable fasteners for their holding power.

Claim 15 is rejected under 35 U.S.C. §103(a) as being unpatentable over Hilston et al. (WO 97/31605) in view of Suenaga et al. (EP 826354) and Roe et al. (US 5554145) as applied to claim 5 above, and further in view of Anspach (FR 2750319).

Further modification of the method of making the fastener of Hilston et al. such that there is a flap for joining the fastener assembly to an article would have been obvious in view of Anspach (figures 2, 3) who suggests the use of a flap 8 to secure the fastener assembly to an article as being a desirable method of providing a secure fastening.

Allowable Subject Matter

Claims 11-13 and 19-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 80-93 are allowed.

Response to Arguments

Applicant's arguments filed March 31, 2003 and July 18, 2003 have been fully considered but they are not persuasive.

Applicant argues that Hilston would imply that one of ordinary skill in the art would view the teachings of this reference as implying that an injection molding method is used and applicant concludes from this that this is not a continuous process. This argument is unpersuasive because the injection molding process is a continuous

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process for the section shown by Hilston. Applicant seems to be assuming the making of a fastener of indeterminate length. However, such is not claimed and Suenaga and Roe do suggest applying rollers to make fasteners of a similar type.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on M, W & F 5:30-1:30, T 5:30-2:00 & TH 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



James R. Brittain
Primary Examiner
Art Unit 3677

JRB